

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

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THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W.D. OF TENN. MEMPHIS

CLARK D. KING,

Plaintiff,

v.

No. 03-2016-D/V

TIME WARNER COMMUNICATIONS;
UNIVERSAL COLLECTIONS SYSTEMS;
NICHOLSON, HACKEL & NICHOLSON
LAW FIRM; and DOUGLAS NICHOLSON,

Defendants.

ORDER DENYING PLAINTIFF'S MOTION
FOR ATTORNEY FEES (Dkt # 25)

Before the Court is Plaintiff's motion for attorney fees pursuant to Fed.R.Civ. P. 54(d)(2).

For the reasons set forth below, Plaintiff's motion for attorney's fees is denied.

On December 5, 2002, Plaintiff filed a complaint for relief under the Fair Debt Collection Practice Act ("FDCPA"), 15 U.S.C. § 1692k(a)(3). Additionally, Plaintiff alleged injuries under the common laws of Tennessee for malicious prosecution, abuse of process, and civil conspiracy. All of Plaintiff's common law claims and the FDCPA claim were subject to a Fed.R.Civ. P. 68 Offer of Judgment made by all the Defendants on February 22, 2005. On March 4, 2005, this matter came to be settled by the parties for the sum of \$18,000.00, outside the Rule 68 Offer of Judgment. Contemporaneous with Plaintiff's motion for attorney's fees, filed May 13, 2005, Plaintiff also filed

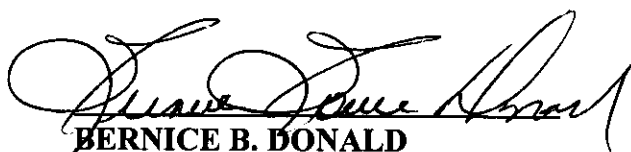
This document entered on the docket sheet in compliance
with Rule 58 and/or 79(a) FRCP on 7/13/05

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a notice of payment of \$18,000.00 by Defendants to Plaintiff. Defendants opposed Plaintiff's motion for attorney's fees on May 27, 2005.

Here, a settlement agreement between the parties allowed for "costs." Plaintiff contends that an award of attorneys fees should be made as costs. The parties' settlement agreement regarding costs were made pursuant to Fed.R.Civ. P. 54, which does not expressly include attorney's fees. Basic principals of contract law must be applied to construe the provisions of the agreement as to attorney's fees. This Court finds that attorney's fees are not costs, and were not factored into the agreed settlement provided for by the terms of the settlement agreement. Accordingly, the Court DENIES Plaintiff's motion for an award of attorney's fees in this matter.

IT IS SO ORDERED this 13 day of July, 2005.


BERNICE B. DONALD
UNITED STATES DISTRICT JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 38 in case 2:03-CV-02016 was distributed by fax, mail, or direct printing on July 15, 2005 to the parties listed.

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Honorable Bernice Donald
US DISTRICT COURT